



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

## Department of Environmental Protection

Western Regional Office • 436 Dwight Street, Springfield MA 01103 • 413-784-1100

DEVAL L. PATRICK  
Governor

RICHARD K. SULLIVAN JR.  
Secretary

KENNETH L. KIMMELL  
Commissioner

Broadway Renewable Strategies, LLC  
295 Freeport Street  
Dorchester, MA 02122-3592  
Attention: Jonathan Wienslaw

November 8, 2013

RE: Lenox-DSWM- Landfill  
Willow Creek Road  
Post Closure Use – Solar Power  
**Permit Approval**  
BWPSW36  
Transmittal #X256080  
SWM File #13-152-001, FMF #39419

Dear Mr. Wienslaw:

The Massachusetts Department of Environmental Protection (the MassDEP) is issuing this permit to Broadway Renewable Strategies, LLC (“Permittee” and “Applicant”) approving the post closure use of the Town of Lenox’s (the “Town”) capped Landfill (the “Landfill”) as a solar power farm (Solar Farm). The Landfill is located on Willow Creek Road in Lenox, Massachusetts.

On September 24, 2013, MassDEP received the BWPSW36 Major Post Closure Use permit application, under transmittal #X256080 (the “Application”). The Application was prepared by your consultant, Lynnfield Engineering, Inc. On September 27, MassDEP sent, by electronic mail, a list of questions and concerns regarding the Application to your consultant.

On October 29, 2013, MassDEP received a Supplemental Submittal prepared by your consultant dated October 28, 2013. This supplemental submittal included clarification on existing and proposed property ownership, existing and proposed site drainage, and proposed landfill improvements.

The Application and Supplemental Submittal were prepared by your consultant, Lynnfield Engineering, Inc. The Application bears your certification and was prepared under the supervision of, and bears the signature and seal of, Richard Barthelmes, Massachusetts Registered Professional Sanitary Engineer # 33017.

The Geotechnical evaluations were prepared by and bear the seal and certification of Alfred A. Taney, Massachusetts Registered Professional Civil Engineer #41218. The electrical plans bear the seal and signature of Lawrence A. Farrer, Massachusetts Registered Electrical Engineer # 30388.

This information is available in alternate format. Call Michelle Waters-Ekanem, Diversity Director, at 617-292-5751. TDD# 1-866-539-7622 or 1-617-574-6868  
MassDEP Website: [www.mass.gov/dep](http://www.mass.gov/dep)

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The Landfill reportedly started operations as a burn dump in the early 1950's. On September 12, 1975, MassDEP approved operational plans for the Lenox Sanitary Landfill. It is estimated the landfill ceased operations in the early 1980's. Little information exists that document the closure of the landfill. It was estimated that the landfill is approximately 6.7 acres.

During June 1999, test pits were excavated to determine the thickness and type of materials used for the closure cap construction. A July 1999 assessment report prepared by Tighe & Bond compared the results to requirements of the 1971 Massachusetts Solid Waste Regulations which required a minimum of a 2 foot thick soil cap over the waste materials. The assessment identified that several test pits identified locations were less than 2 foot thickness of soil existed. The assessment indicated that additional soil cover was needed primarily "across the southern portion of the site to conform to the 1991 capping criteria."

The landfill cap has also been damaged by vehicle traffic resulting in ruts and depressions that collect surface water runoff and creates ponding. These areas also need to be regraded.

The landfill as delineated in the 1999 assessment is located on several properties as listed below (with the Town assessor's map and lot number). Some of properties are reportedly not presently owned by the Town.

1. Property owned by the Town of Lenox located east of Willow Creek Road (map 14, lot 3);
2. Property owned by the Town of Lenox located west of Willow Creek Road (map 14, lot 2);
3. Approximate 50 foot wide strip of land running from Willow Creek road to the northerly limit of the Town owned parcels. Documentation submitted in the Supplemental Submittal prepared by a Town representative indicates that the Town owns the right of way;
4. Land to southwest owned by Leonard H. Peters Trust (map 14, lot 1);
5. Land to west owned by Leonard H. Peters (map 8, lot 96);
6. Land to the southeast owned by Peter F. Borgins (map 9, lot 5) containing approximately 0.02 acres of landfill; and
7. Land to the east owned by The Housatonic Railroad Company containing approximately 0.11 acres of landfill.

It is proposed that portions of the land owned by Leonard H. Peters Trust and Leonard H. Peters that contain the landfill and an approximately 100 foot wide buffer to the west will be purchased by the Town of Lenox and included in the lease for the solar installation. The Borgins and railroad properties contain smaller areas of waste located along their property lines to the Town owned land and are not proposed to be used for the solar installation.

### Summary of Proposal

An Environmental Notification Form for the proposed Solar Farm was submitted pursuant to the Massachusetts Environmental Policy Act ("MEPA"). On May 24, 2012, the project received a Certificate from MEPA determining that no further review is required.

The application proposes the construction and maintenance of a 0.638 megawatt (MW) DC photovoltaic solar farm on approximately 3 acres of the capped landfill, as follows:

- Trees and brush located on the landfill cap will be cut, stumps will be ground and wood chips will be removed.
- The Landfill will be regraded and additional soils and topsoil will be added to provide a minimum of 2 foot thickness of soil cap above the waste with appropriate grade.
- Replacement soils shall be a minimum of 18 inch thickness of soils with a permeability of less than  $1 \times 10^{-5}$  cm/sec covered with a minimum of six (6) inch thickness of soils suitable to maintain a vegetative cover.
- The solar array will be placed on the flatter top portion of the Landfill, with the solar panels tilted at 20 degrees from horizontal, facing south;
- A total of 2,200 Suntech solar panel modules, mounted on a rack system and attached to concrete ballast blocks will be placed on the vegetative support layer of the cap;
- Combiner boxes with disconnects will be mounted on separate rack systems located to the west of the solar panels;
- Concrete ballast blocks will be pre-cast and placed either directly on top of the existing landfill cap. Additional borrow of asphalt millings, or crushed asphalt, brick or concrete will be placed if leveling is required for the placement of the blocks.
- Transformer, switch, and inverter equipment will be installed on concrete pads located beyond the limits of the Landfill cap;
- Electrical conduits installed within the limits of the Landfill cap are proposed to be installed within the top six (6) inches of soil cover;
- Excavation into the cap is limited to the installation of the conduits;
- Light displacement equipment will transport all materials within the limits of the landfill cap;
- It is proposed that if the operation of light displacement equipment on the Landfill cap is, or maybe, operations will temporarily stop and a layer of woven geotextile will be placed directly over the vegetative support layer of the Landfill cap, and six inches of gravel will be placed over the geotextile;
- A construction staging area is proposed to be located off of the Landfill cap;
- A six-foot tall, chain-link fence will be installed around the entire perimeter of the solar farm and will be located within the limits of the existing Landfill cap in some areas. The fence will be placed on "Jersey Barriers" and no excavation is proposed into the cap for the installation of the fence;
- Locking gates will be provided at the access road entrance to the Landfill; and
- The solar array will be grounded as required by electrical code. No grounding wires or rods will extend down into the vegetative support layer of the cap.

Calculations (Appendix F) are provided showing the potential ground pressure on the cover from the weight of the ballasts, racks, panels, as well as snow and wind loads. The Application states that the maximum ground pressure will be 4.9 pounds per square inch (psi).

Geotechnical calculations (included in Appendix G) estimate typical loadings from construction equipment operation on the Landfill's cap.

Stormwater analyses for changes to stormwater runoff from the existing conditions to the proposed condition are included in the Supplemental Submittal as Attachment # 2. "The

Stormwater Analysis Summary” states:

*“The stormwater analysis estimates a decrease in peak rate of runoff for all 3 storm events due to the change in slope and increased time of concentration from existing to proposed conditions. As a result, existing side slope areas should not be impacted as a result of the proposed project.”*

There is presently no existing environmental monitoring program for the Landfill. It is stated that the Town will be responsible for the maintenance and monitoring of the landfill areas located outside the limits of the lease as delineated on the Plans. The Applicant proposes to maintain and mow areas located within the lease limits.

### **MassDEP Determinations**

Personnel of MassDEP have reviewed the Post-Closure Use permit application for the Landfill in accordance with MGL c. 111 s. 150A, MGL c. 30A, 310 CMR 19.000, and MassDEP’s publication Landfill Technical Guidance Manual (the LAC), revised in May, 1997. MassDEP has determined that the application is approved in accordance with MGL c. 111, s. 150A and MGL c. 30A, subject to the conditions outlined below.

Note that this document is a permit issued pursuant to MGL Chapter 111 Section 150A and the regulations promulgated hereunder at 310 CMR 16.00 and 310 CMR 19.000.

This permit is issued subject to the conditions of joint liability of the permittee, the owner and the operator in accordance with 310 CMR 19.043(3).

### **I. GENERAL PERMIT CONDITIONS**

1. Broadway Renewable Strategies, LLC (“Broadway”) is the Permittee and Operator for this post-closure use permit for the construction and operation of the solar farm on the Landfill, and is responsible to comply with the conditions of this permit, as the permittee and the Operator.
2. The Town of Lenox (the “Town”), Leonard H. Peters Trust, Leonard H. Peters and Peter F. Borgins and The Housatonic Railroad Company are owners of properties that contain the Landfill, and therefore have certain obligations pursuant to 310 CMR 19.000.
3. The Town is proposing to take ownership of a portion of the land owned by the Leonard H. Peters Trust and by Leonard H. Peters. At a minimum the ownership limits shall include all of the landfill limits located on each property and shall extend a minimum of 100 feet beyond the footprint of the landfill. Documentation of the property transfer shall be submitted to MassDEP prior to the commencement of construction of the solar farm.
4. Prior to the commencement of construction, the Permittee shall submit documentation that the Permittee has a legal right to use the Willow Creek Road right of way (“ROW”) and that

the installation of the solar panels and appurtenances within the ROW does not obstruct or prevent any legal use of the ROW by others.

5. A portion of the landfill is located on properties owned by Peter F. Borgins and by The Housatonic Railroad Company. Not later than September 15, 2014, documentation shall be submitted to MassDEP that legal access agreement have been obtained that allows the Town and/or the Permittee to access to these portions of the landfill for monitoring and maintenance. The agreements shall also include an adequate buffer area beyond the limits of the waste. In lieu of an agreement, the transfer of the portion of the properties and an adequate buffer area would be acceptable to MassDEP.
6. Prior to the commencement of construction, a “Record Notice of Landfill Operation”, in accordance with 310 CMR 19.141, shall be recorded referencing all of the properties containing landfill materials.
7. The Application showed a “FUTURE WALKING PATH (BY OTHERS)”, but did not include details or request approval. This Permit **does not** include approval to construct the Walking Path.
8. A Notice of Intent shall be submitted to the Lenox Conservation Commission as proposed. A copy of the Commission’s approval or determination shall be submitted to the undersigned prior to commencement of the construction.
9. An NPDES CGP permit shall be obtained, as proposed. A copy of the Permit shall be submitted to the undersigned prior to the commencement of construction.
10. The Permittee shall install the solar panels and modify the Landfill only in accordance with the Application referenced above, except as modified by this permit or otherwise approved by the MassDEP in writing.
11. A minimum of seven (7) days prior to the start of construction, the Permittee shall submit a detailed schedule for the project to MassDEP.
12. A minimum of seven (7) days prior to the start of construction, the Permittee shall submit a list of project personnel and their contact information. The Permittee shall advise MassDEP in writing of any changes in the project personnel list.
13. Construction Oversight:
  - a. A third-party, independent Massachusetts-registered professional engineer knowledgeable in landfill design and construction (the “Construction Engineer”) shall supervise the overall construction of the Solar Farm. The Construction Engineer and/or a qualified QA/QC officer shall be present at the site at all times during construction of the road, fence installation, and installation of the electrical equipment, ballast blocks, and rack/panel installation, and when any construction equipment is operating on the Landfill cap. The QA/QC officer shall work under

- the direct supervision of the Construction Engineer.
- b. The Construction Engineer's duties shall include, but not be limited to; oversee installation and construction of the components of the Solar Farm as outlined above; oversee quality assurance/quality control (QA/QC) testing and verify all data generated through the testing program; document all construction and QA/QC activities; and submit monthly construction progress reports to the MassDEP and the Town, which shall summarize the work performed during the month.
  - c. The Construction Engineer shall inspect the site at least once per week during periods when daily oversight is unnecessary. The Construction Engineer may contact MassDEP for guidance if the need for daily engineering oversight is unclear in a given circumstance.
  - d. The Construction Engineer shall have sufficient staff onsite to provide quality assurance/quality control (QA/QC) oversight for all construction work.
  - e. Within 60 days following the completion of construction, the Construction Engineer shall submit a completion report, signed and stamped by a Massachusetts-registered P.E., either certifying that the work was completed in accordance with the approved plans and specifications and the conditions of this permit or detailing any and all deviations from this approval.
  - f. MassDEP reserves the right to require greater or more frequent oversight by the Construction Engineer than specified herein if it believes such increased oversight is necessary to protect the Landfill cover or appurtenances, public health, safety, or the environment.
14. The Construction Engineer's monthly construction report shall include at a minimum the following:
- a. Updated schedule;
  - b. Copies of daily field inspection reports;
  - c. Summary of any and all deviations from compliance with requirements approved or set forth in this Permit or subsequent MassDEP approvals;
  - d. Any actions taken to correct such deviations, as required by MassDEP or recommended by the Engineer;
  - e. Schedules to correct identified problems;
  - f. Review of quality assurance/quality control (QA/QC) testing data generated, and documentation for construction and QA/QC activities;
  - g. The construction report shall be signed, sealed and certified by the Engineer in accordance with 310 CMR 19.011 (1&2); and
  - h. The Engineer shall submit one copy of the monthly report to the MassDEP and one copy to the Town no later than seven (7) days following the end of the previous month.

## **II. SPECIFIC PERMIT CONDITIONS**

15. The Permittee, owners, operators and their contractor(s) are responsible to ensure that all necessary precautions are taken to protect the health and safety of workers and the general public during both construction and maintenance of the solar farm. A copy of the site-specific Health & Safety Plan for the construction and maintenance of the Solar Farm shall

be submitted to the MassDEP prior to the beginning of any construction work, which shall include protocols for monitoring of landfill gas as needed, and protocols for modifying work practices if landfill gas is detected at levels deemed unsuitable.

16. As part of the site-specific Health & Safety Plan, a written protocol shall be prepared and submitted for the maintenance of the inverters/transformers, and for regular calibration and maintenance of landfill gas monitors used by workers on the site.
17. Prior to the commencement of construction activities, the entire solar array area including access roads shall be mowed.
18. Prior to the commencement of construction activities, any above-ground structures of the Landfill cap or appurtenances shall be flagged for visibility, and protective barriers shall be placed around such structures as needed to prevent damage by vehicles accessing the cap area.
19. In areas where the solar farm restricts access to other areas of the landfill property for future maintenance, permanent access road(s) shall be designed and constructed to allow for future maintenance. Design and location of the access roads shall be submitted to MassDEP a minimum of 60 days prior to the commencement of construction. Gates shall be installed to control the future use of the access road(s). Locations where access roads are required include:
  - a. A permanent access road shall be constructed from the south property line along Willow Creek Road through the proposed gate and terminating at the south limits of the solar panels. The road shall include adequate turn around areas. A Gate shall be installed at the Property line.
  - b. An access road across the landfill cap from Willow Creek Road to allow for access for future maintenance of the landfill cap to the east and west of the solar farm.
  - c. An access road across the landfill cap north of the solar farm to allow for maintenance of the landfill cap areas north and east of the solar farm.
  - d. An access road located west of the landfill located off of the landfill cap that connects access roads required by conditions b. and c. above.
20. The staging area and access to the staging area shall be located off of the Landfill cap as proposed. If access to the staging area is across or over the landfill cap, design and location of the proposed roadway shall be submitted to MassDEP a minimum of 60 days prior to the commencement of construction.
21. All trees and brush located within the "Lease Limits" shall be cut and the stumps shall be ground or removed. Wood chips shall also be removed prior to filling or regrading.
22. Trees on side slope to the east, where slope exceeds 10 percent slope, may be cut and stumps may remain to minimize disruption of side slopes.
23. Low spots, voids and areas previously identified as having less than the required 2 foot thick soil cap shall be filled.

24. The Landfill shall be regraded and additional soils and topsoil shall be added to provide a minimum of 2 foot thickness of soil cap above the waste.
25. Regrading shall result in positive drainage with no low spots or ponding. Where possible minimum slopes shall be 5% but in no case shall slopes be less than 2%.
26. Replacement soils shall be a minimum of 18 inch thickness of soils with a permeability of less than  $1 \times 10^{-5}$  cm/sec covered with a minimum of six (6) inch thickness of soils suitable to maintain a vegetative cover.
27. Disturbance of the Landfill cap beyond the removal of trees and woody vegetation and the regrading as approved above shall be limited to the proposed installations on top of the vegetative support layer of the cap, i.e. - no excavations or other penetrations shall be performed into the capped areas (except for conduit installation) without separate written approval from the MassDEP.
  - a. Excavation for conduits shall not exceed 8 inch depth below finish grade.
  - b. All concrete blocks placed on the cap shall be placed on top of, or above, the vegetative support layer of the cap, unless otherwise approved by the MassDEP in writing.
  - c. Excavation approved by this Permit is the limited to excavation required for the installation of the electrical conduits as detailed on the design plans and removal of existing trees, brush and stumps.
  - d. All disturbed areas including conduit trenches, root/stump removal areas and regraded areas shall be capped with a minimum of an 18 inch thickness of soils with a permeability of less than  $1 \times 10^{-5}$  cm/sec. The total of the existing and additional soil shall be greater than 18 inch thick.
  - e. All disturbed areas shall be covered with a minimum of a six-inch thick layer of soils capable of supporting a suitable vegetative growth.
  - f. All disturbed areas shall be seeded and suitable vegetation shall be established and maintained.
  - g. Survey and control stakes shall not be driven into the Landfill cap.
  - h. Erosion control devices within the limits of the cap shall not be installed using stakes.
  - i. Staples less than 12 inches total length may be used to hold erosion control devices
28. The Permittee and their contractor(s) are responsible to ensure that the inverter and transformer cabinets will not accumulate landfill gas during the construction and operation of the solar array. Any landfill gas levels exceeding 10% of the Lower Explosive Limit (% LEL) within any electrical equipment box shall trigger the requirements of 310 CMR 19.132(4)(g), for notification and action. Additional requirements for the enclosures include the following:
  - a. All conduits and conduit trenches shall be sealed at all ends.
  - b. The Permittee shall ensure that the design of any transformers, inverters, and any other electrical cabinets/equipment shall not allow the entry of landfill gas, and in



- the event that gas does enter, the equipment shall be designed to prevent the ignition of the gas.
- c. As part of the site-specific H&S Plan, a written protocol shall be prepared and submitted for the maintenance of the inverters/transformers, and for regular calibration and maintenance of landfill gas monitors used by workers on the site.
  - d. If the Permittee intends to install any other equipment on the surface of the Landfill or in proximity of the Landfill (i.e. equipment not specifically identified in the application or subsequent correspondence), it shall submit documentation and specifications for such equipment prior to construction so that MassDEP can review it in relation to potential landfill gas impacts.
29. The Permittee is responsible to ensure that the proposed work complies with all applicable local, state and federal regulations, including local building permits and electrical permits, as may be required.
30. All necessary precautions shall be taken to ensure that the proposed construction and maintenance work associated with the Solar Farm shall not in any way damage the Landfill cap, or appurtenances. If any damage occurs, the Permittee shall notify MassDEP (within 24 hours maximum), a written plan for repair of the components shall be submitted to MassDEP within 48 hours, and any repair work shall be completed on the schedule approved by MassDEP.
31. Prior to the start of construction, the Permittee shall determine the actual ground pressure of all equipment to be used on the cap, at fully loaded capacity (i.e. including full loads of grading materials or concrete ballast), and document that the loaded ground pressure is less than 7 PSI.
32. Vehicles operating on the Landfill cap shall be low-pressure construction equipment (with loaded ground pressures of 7 psi or less), in accordance with the conditions of this permit. All operators of vehicles entering the landfill area shall be clearly instructed by the on-site engineer and/or the contractor of the requirements of this permit prior to arrival, to avoid damage to the landfill cap components. Low-pressure construction equipment operating on the landfill cap shall limit turning by tracks on the vegetative support layer as much as possible. In no case shall rutting or other disturbance extend more than 6 inches down into the vegetative support layer.
33. MassDEP specifically reserves the right to restrict or prohibit heavy vehicular loads from the access roads located on the Landfill cap, either as a weight restriction or a usage restriction, should inspections or other information reveal the potential for damage to the cap beneath the road from heavy vehicle loads. MassDEP also specifically reserves the right to impose, at any time deemed necessary by MassDEP, additional requirements for construction of the access road on the cap, including the addition of a geo-grid to the base of the access road.
34. If the Permittee modifies the design and intends to use different solar panels, panel racks, ladder racks, or electrical equipment other than that detailed in the application, the Permittee

shall notify MassDEP and provide documentation that the alternative equipment does not increase calculated ground pressures or decrease calculated Factors of Safety for solar array stability.

35. Clean, crushed asphalt, brick and concrete (ABC rubble) may be used for leveling beneath ballast blocks. The maximum size of the crushed ABC shall not exceed 1.5 inches in its maximum dimension and shall meet the gradation requirements specified for Process Gravel included in the submitted specifications.
36. Compaction of the leveling materials or clean ABC must not damage the landfill cap, and shall not be compacted more than 6 inches into the vegetative support layer.
37. Coated (painted or stained) ABC rubble shall **not** be used in the Solar Farm construction.
38. The Permittee and their contractor(s) are responsible to ensure that the proposed work complies with all applicable local, state and federal electrical codes and permits, including the National Electrical Code (NEC), 2011 Edition, Article 690 –“Solar Photovoltaic (PV) Systems”.
39. All grounding of the solar array shall be performed in accordance with the applicable portions of the NEC and state/local electrical codes. Grounding and electrical equipment shall not penetrate the Landfill cap, unless specifically approved by MassDEP.
40. All areas disturbed during construction shall be repaired. Additional vegetative support material shall be placed as required, seeded and acceptable grass shall be established.

### **III. OPERATIONS, MAINTENANCE CONDITIONS AND ENVIRONMENTAL MONITORING**

41. The following conditions apply to the minimum required maintenance of the Landfill:
  - a. The Landfill surface within the solar farm or array lease limits shall be mowed at least twice per year.
  - b. The condition of the fence and access gates shall be inspected at least once a month. Any damage to the fence or gates shall be repaired.
  - c. The condition of the sideslope between the Landfill and the railroad track shall be inspected at least once per month.
  - d. Any erosion problems, settlement problems, or other issues observed on the Landfill cap (inside or outside of the limits of the Solar Farm) or on the sideslope shall be reported to MassDEP, stabilized immediately and repaired within 30 days of discovery.
42. Following completion of the installation, inspections of the Solar Farm shall be performed on a quarterly basis by a qualified, independent third-party inspector working

under the direction and supervision of a Massachusetts registered professional engineer. After one year of quarterly inspections, the Permittee may petition MassDEP in writing to reduce the frequency of inspections. The inspections shall include the following:

- a. The entire Landfill cap and sideslope between the Landfill and the railroad and the railroad shall be walked and any problems with the Landfill cap, erosion, unusual or excessive settlement, stressed vegetation, damage to Landfill cap or sideslope, and any other problems with the Landfill cap or sideslope shall be identified.
- b. Preparation and submittal of an inspection report summarizing the inspection.
- c. Identification of any problems with access controls such as damaged gates and/or fences, as well as any evidence that unauthorized access to the solar array area that may have occurred.
- d. Any damage to landfill appurtenances.
- e. A description of actions taken to correct any problems.
- f. A signed and certified copy of the Inspection Report shall be submitted to MassDEP and to the Board of Health within 30 days of the date of the inspection.

43. The Permittee shall ensure that any erosion, unusual or excessive settlement, stressed vegetation, appurtenances, and any other problems with the Landfill cap or sideslope identified during any inspection or site visit are reported to MassDEP within 24 hours of discovery. Such problems shall be evaluated and appropriately repaired within 7 days of discovery or in accordance with an alternative schedule approved by MassDEP.

44. At the completion of the active use of the solar farm the following actions shall be taken:

- a. All panels, racks, concrete blocks located on the Landfill cap, and exposed conduits shall be removed and sealed.
- b. Buried conduits may remain provide they are cut off below grade and permanently plugged.
- c. Landfill grades shall be restored and vegetative support layer shall be replaced/repared as necessary.
- d. All disturbed areas except for gravel road surfaces shall be reseeded.
- e. Vegetation shall be established and maintained.

45. Environmental Monitoring of the Landfill will be required. Prior to the start of construction of the solar farm, a plan shall be prepared by the Town, and submitted to MassDEP for review and approval for the proposed long term environmental monitoring of the Landfill. Environmental monitoring shall include as a minimum:

- a. Two downgradient, one upgradient and one cross-gradient monitoring wells. The downgradient wells shall be clusters and include a shallow and deep well.
- b. Upgradient and downgradient surface water sampling of the river.
- c. Upstream and downstream sampling of the brook reportedly located south of the landfill.
- d. Upgradient and downgradient sampling of the "eastern landfill drainage ditch".
- e. Upstream and downstream in Woods Pond.
- f. Sampling of private water supply wells located within 1500 feet of the landfill limits.
- g. Sampling of any leachate seeps.

46. Prior to the commencement of construction, a proposed procedure and schedule for maintenance of the landfill cap beyond the lease limits shall be submitted by the Town for review and approval by MassDEP. Items to be addressed include:
- Removal of all trees and brush located on the landfill cap.
  - Stability of the east side slope located west of the railroad tracks and partially on Railroad property.
  - Removal of large metal items reportedly primarily located on the east sideslope.
  - Filling and regrading of low spots to provide drainage.
  - Annual mowing of the Landfill cap.
  - Documentation that the Town either owns all land where solid waste was disposed of and all land where the landfill cap exists, or that the Town has easements or other agreements to access the landfill cap for maintenance and monitoring.
47. The Permittee and Owners shall perform the following activities for all areas of the landfill required by 310 CMR 19.142 (5), Landfill Post-Closure Requirements, of the Solid Waste Management Facility Regulations:
- “(a) take corrective actions to remediate and/or mitigate conditions that would compromise the integrity and purpose for the final cover;*  
*(b) maintain the integrity of the liner system and the final cover system; ...*  
*(d) monitor and maintain the environmental monitoring systems for surface water, ground water and air quality;*  
*(e) maintain access roads; ...*  
*(g) protect and maintain surveyed benchmarks; and*  
*(h) have the landfill inspected by a third-party consulting Massachusetts Registered Professional engineer, or other qualified professional approved by the Department, experienced in solid waste management, in accordance with the post-closure plan.”*
48. The landfill shall not be used for any post-closure activity without prior written approval from MassDEP. The Permittee shall comply with the post-closure use requirements set forth at 310 CMR 19.143 (1) - (4), which are hereby incorporated into this Permit by reference.
49. An annual post-closure report for the Landfill shall be submitted, as required by 310 CMR 19.142 (6) Reporting Requirements, not later than February 15<sup>th</sup> of each year.

#### **IV. STANDARD CONDITIONS**

50. This post-closure use permit shall be valid for a period of 20 years from the date of this Permit, provided that MassDEP may amend the term of the permit in accordance with an approved modification pursuant to either 310 CMR 19.039 or 19.040.
51. If construction of the solar panel installation has not been completed within three years of the date of issuance of this Permit, this Permit shall expire. The Permittee, owner or

operator may apply to the MassDEP for an extension of the Permit at any time prior to or after it expires.

52. If the Permittee intends to operate the Solar Farm after the expiration of this permit, the Permittee is required to submit a request for a renewal of the permit at least 90 days prior to the expiration of the permit.
53. If the Permittee intends to transfer this permit to any other entity for operation of the Solar Farm, the requirements at 310 CMR 19.044, Transfer of Permits, shall be satisfactorily completed.
54. If the permittee or operator discontinues operation of the Solar Farm, the Town, the permittee and the operator are responsible to perform decommissioning activities as outlined in the permit application, including removal of the solar array equipment, ballasts, and associated leveling pads.
55. This permit is issued subject to the conditions of joint liability of the permittee, the owner and the operator in accordance with 310 CMR 19.043(3).
56. The Permittee, their contractors and subcontractors and the Construction Engineer shall be considered Operators with respect to the construction of the Solar Farm and compliance with plans and specifications. The Permittee shall also be considered an operator during the operational life and decommissioning of the Solar Farm. As such, the MassDEP may take enforcement action against The Permittee or the Construction Engineer, consistent with its authority under applicable Massachusetts law and regulation, for any failure to construct the Solar Farm in accordance with approved plans and specifications of which the Permittee or the Engineer were, or should have been, aware. 310 CMR 19.006, defines "Operator" as:  
  
*"Operator means any person who has care, charge or control of a facility subject to 310 CMR 19.000, including without limitation, an agent, lessee of the owner or an independent contractor."*
57. The Permittee, the Owners, the Contractor(s), and subcontractors shall comply with 310 CMR 19.015 Compliance, which states:  
  
*"No person shall construct, modify, operate or maintain a facility except in compliance with a site assignment, permit or plan approved by the board of health or MassDEP, as applicable, and any authorizations issued by MassDEP and all conditions included in a permit, approval or authorization for said facility."*
58. The Applicant in this permit application seeks no variances from any applicable regulations.
59. This approval pertains only to the Solid Waste Management aspects of the proposal and does not negate the responsibilities of the owners or operators to comply with any other local, state or federal laws, statutes and regulations or enforcement actions, including orders

issued by another agency now or in the future. Nor does this approval limit the liability of owners, operators or otherwise legally responsible parties from any other applicable laws, statutes or regulations now or in the future.

60. MassDEP and its agents and employees shall have the right to enter upon the Landfill at all reasonable times, to inspect the Landfill and any equipment, structure or land located thereon, take samples, recover materials or discharges, have access to and photocopy records, to perform tests and to otherwise monitor compliance with this Permit and all environmental laws and regulations. This right of entry and inspection shall be in addition to MassDEP's access authorities and rights under applicable federal and states laws and regulations, as well as any permits or other agreements between the Permittee and MassDEP.
61. MassDEP reserves the right to require additional or increased monitoring or maintenance activities in the event that the post-closure use is or may be having a detrimental effect on the Landfill cap or appurtenances. MassDEP reserves all rights to suspend, modify or rescind this permit, should the conditions of this permit not be met, should the Solar Farm create nuisance conditions or threats to public health, safety or the environment, or should MassDEP otherwise determine that continued post-closure use is negatively impacting the Landfill cap or appurtenances.
62. Unless otherwise directed herein, all submissions required pursuant to this permit shall be sent to:

Section Chief, Solid Waste Management  
Department of Environmental Protection  
436 Dwight Street  
Springfield, MA 01103

63. Compliance with submissions required pursuant to this approval shall be determined by the date of receipt by MassDEP or by the postmarked date, whichever is earlier.
64. All verbal notifications shall be followed by written notification within 48 hours of discovery.

Pursuant to 310 CMR 19.037(5), any person aggrieved by the issuance or denial of this permit decision, except as provided for under 310 CMR 19.037(4)(b), may file an appeal for judicial review of said decision in accordance with the provisions of M.G.L. c. 111, s. 150A and c. 30A not later than thirty [30] days following the receipt of the final permit. The standing of a person to file an appeal and the procedures for filing such appeal shall be governed by the provisions of M.G.L. c. 30 A. Unless the person requesting an appeal requests and is granted a stay of the terms and conditions of the permit by a court of competent jurisdiction, the permit decision shall remain effective or become effective at the conclusion of the 30 day period.

Any aggrieved person intending to appeal the decision to the superior court shall provide notice to MassDEP of said intention to commence such action. Said Notice of Intention shall include the

MassDEP File Number (13-152-001) and shall identify with particularity the issues and reason(s) why it is believed the approval decision was not proper. Such notice shall be provided to the Office of General Counsel of MassDEP and the Regional Director for the regional office which made the decision. The appropriate addresses to which to send such notices are:

General Counsel  
Department of Environmental Protection  
One Winter Street-Third floor  
Boston, 02108

Regional Director  
Department of Environmental Protection  
436 Dwight Street - Fifth Floor  
Springfield, MA 01103

No allegation shall be made in any judicial appeal of this decision unless the matter complained of was raised at the appropriate point in the administrative review procedures established in those regulations, provided that matter may be raised upon a showing that it is material and that it was not reasonably possible with due diligence to have been raised during such procedures or that matter sought to be raised is of critical importance to the public health or environmental impact of the permitted activity. This approval pertains only to the Solid Waste Management aspects of the proposal and does not negate the responsibilities of the owners or operators to comply with any other local, state or federal laws and regulations now or in the future.

If you have any questions about this matter, please contact Charles Clines of this office at 413-755-2120.

Sincerely,

This final document copy is being provided to you electronically by the  
Department of Environmental Protection. A signed copy of this document  
is on file at the DEP office listed on the letterhead.

Daniel Hall  
Section Chief, Solid Waste Management

DH/CAC/cac  
1521modsolar.1013

Certified Mail, 7011 3500 0000 8445 4714, Return Receipt

cc: Carol Peters, Trustee, Leonard H. Peters Trust, PO Box 74, Lenox, MA 01240  
Leonard H. Peters, C/O Carol Peters, PO Box 74, Lenox, MA 01240  
The Housatonic Railroad Company, PO Box 1146, Canaan, CT 06018  
Peter F Borgnis, PO Box 951, Lenox, MA 01240  
Board of Health, Town of Lenox, 6 Walker Street, Lenox, MA 01240  
Gregory Federspiel, Town Manager, 6 Walker Street, Lenox, MA 01240  
Richard Barthelmes, PE, Lynnfield Engineering, Inc., 199 Newbury St., Suite 115,  
Danvers, MA 01923